

**ENTERED**

August 15, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**KELTON VONDRE YATES,**

**Petitioner,**

**V.**

**BOBBY LUMPKIN,  
DIRECTOR, TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS  
DIVISION,**

**Respondent.**

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**Civil Action No. 4:22-CV-02523**

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION**  
**OF THE UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the July 17, 2023 Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Peter Bray. (Dkt. No. 17). Judge Bray made findings and conclusions and recommended that the Respondent’s Motion for Summary Judgment, (Dkt. No. 12), be granted and that Yates’s petition be dismissed with prejudice as time-barred. (Dkt. No. 17).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On August 2, 2023, Yates filed objections. (Dkt. No. 18). First, Yates objects to Judge Bray’s finding that none of Yates’s claims implicate a factual predicate that could not have been discovered before the expiration of the limitations period through the exercise of due diligence. (*Id.* at 1). Second, Yates objects to Judge Bray’s finding that Yates failed to demonstrate that he diligently pursued relief. (*Id.* at 3). Third, Yates argues that Judge Bray incorrectly determined that the

decision in *Ex Parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), which overruled *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), did not give rise to his claims.

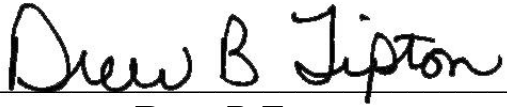
In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; see also Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Bray’s M&R, (Dkt. No. 17), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court; and
- (2) Respondent’s Motion for Summary Judgment, (Dkt. No. 12), is **GRANTED**.

It is SO ORDERED.

Signed on August 14, 2023.

  
DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE